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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/588,807	06/06/2000	William G. Lundell		9281

24737 7590 05/21/2003

PHILIPS ELECTRONICS NORTH AMERICAN CORP
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TARRYTOWN, NY 10591

EXAMINER

SPISICH, MARK

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 05/21/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/588,807

Applicant(s)

LUNDELL ET AL.

Examiner

Mark Spisich

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 10-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Claims 10-12 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 6.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-4 and 7-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Marx et al (USP 6,230,717). The patent to Marx discloses a disposable (see title and abstract, line 1) toothbrush (10) as well as a power system (21,22+fig 13) which includes a non-rechargeable battery (22) (claim 2) which would have a predetermined life (see column 6, lines 10-23). The functional or otherwise narrative language in the claims (i.e. the terms "trial" or "less than normal") fail to define over the structure of the prior art.
4. Claims 1-4 and 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Montanio (USP 4,179,814). The patent to Montanio discloses a powered (motor 14)

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tooth cleaning device including a power system including non-rechargeable batteries (20) (see column 3, lines 7-9) which would have a predetermined life. The use of the term "disposable" does not define over the prior art.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lundell et al (USP 5,994,855) in view of Marx et al (USP 6,230,717). The patent to Lundell discloses an electric toothbrush (10) including a power system (22) including a battery (column 2, lines 39-40). The patent to Lundell, with respect to the structure of the device, discloses the invention substantially as claimed with the exception of the non-rechargeable battery. The patent to Marx discloses a power toothbrush (10) which includes a non-rechargeable battery (22) (column 6, lines 10-23) with an enclosed housing (11) whereby the toothbrush is disposable after use (abstract, line 1). It would have been obvious to one of ordinary skill to have modified the device of Lundell as taught by Marx so as to eliminate the need for the charging base and to reduce the cost of the device so that it could be readily disposed of after use. The use of the battery of Marx would power the brush for a "predetermined time". The narrative recitations in claims 1 and 7 (with regard to the "trial" aspect) define no structure. With regard to claims 5-6, see column 3, line 62 thru column, line 49.

Response to Arguments

7. Applicant's arguments filed 9 May 2003 have been fully considered but they are not persuasive. Applicant's primary argument pertains to the issue of "trial" period being less than the "normal period of time". The devices of the prior art, namely Montanio (USP 4,179,814) and Marx et al (USP 6,230,717), each disclose an oral care brush which utilizes a disposable battery which would over time lose its charge and thus prohibit further use of the brush. This would define a predetermined period. Applicant is relying on some arbitrary comparison with some "commercial" unit to define the invention rather than pointing out a structural limitation that is lacking in the prior art. The use of the term "normal" does not define any structure but instead relates solely to a comparison with some "hypothetical" commercial brush. For example, one could simply use a cheaper quality battery in either of the two primary references and this would enable operation for a period of time less than if a better quality battery was used. With regard to applicant's comment that the device of Montanio is not disposable, everything is disposable. The argument that the device of Montanio is used for a short (albeit unclaimed) period of time and then subsequently disposed of so that a potential customer can evaluate the brush and possibly brush the commercial version of the brush is solely a "future act" with regard to the subsequent use of the brush.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (703) 308-1271. The examiner can normally be reached on M-Th (6-3:30), Alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J Warden can be reached on (703) 308-2920. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Mark Spisich
Primary Examiner
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